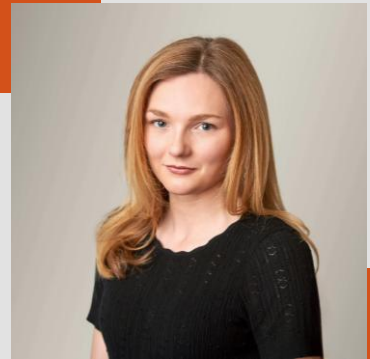


Judicial Review in Education Claims: Key Areas and Practical Tips



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Judicial Review Fundamentals

(1) Not an examination of the merits of decisions!

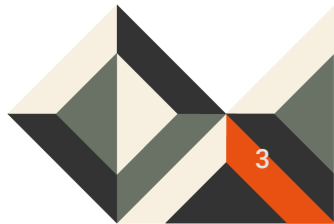
(2) Key procedural features:

A remedy of last resort: *R (W) v Hertfordshire* [2023] EWHC 3138 (Admin)

Limitation: CPR r. 54.5, a claim must issue promptly and within three months

Candour: litigation is conducted with 'cards face up on the table'

Relief is discretionary: the court will not generally consider academic claims



Mandatory Duties and Delay

- Unless legislation provides for a deadline, duties must generally be complied with ‘within a reasonable time’;
- What is reasonable will depend on all the circumstances;
- Mandatory duties are absolute and best endeavors will not suffice:
- **Declaratory relief where a local authority has failed to complete an EHC Needs Assessment within 16 weeks: *R (JSC) v. Cambridgeshire* [2026] EWHC 68 (Admin)**
- **Mandatory relief where a local authority breached the statutory duty under s. 42 Children and Families Act 2014, five weeks to secure compliance: *R (JSH) v Westmorland and Furness* [2024] EWHC 3362 (Admin)**



Delay in education cases

- R (JSC) v Cambridgeshire [2026] EWHC 68 (Admin):

“As [the claimant] submitted in his skeleton argument, in SEN cases time is critical. The very reason an EHCP needs assessment is triggered is that a child or young person is already struggling to cope...The primary goal of the assessment is to act promptly...”



Compliance with Orders

- Orders of the FTT / Upper Tribunal – no “best endeavours” defence!

“...even if the defendant is entitled to a reasonable time to implement the provision and even in the context of a pandemic, one year is not a reasonable period of time...the five week period built into the statutory scheme is to allow preparation for implementation, and the bulk of the programme at least should have been in place within that five week period”: **R (BA) v. Nottinghamshire County Council [2021] EWHC 1348**

“...a local authority bears the burden of proving that it is doing all it can to meet its legal duty... Unless the local authority can so prove, it is likely to find itself ‘rowing against a very strong current’ if it is nonetheless seeking to persuade a court that no relief should be granted in respect of a prolonged failure to comply with the duty”: **R (HXN) v. Redbridge [2024] EWHC 442 (Admin)**

- Orders of the High Court

“The contents of this judgment shame Cardiff City Council. Whether any further penalty is appropriate in this case is likely to depend, amongst other matters, on whether an apology is forthcoming and on the strenuousness of the efforts the Council now makes to comply with the mandatory order which remains in effect”: **JS v. Cardiff City Council [2022] EWHC 707 (Admin)**



Resources and Compliance

How to approach resource issues and challenges with compliance...

- Before a mandatory order is granted:

*“...the onus is on the authority to explain to the court why a mandatory order should not be made to ensure that it complies with its duty. In order to provide the court with reasons to justify the exercise of its discretion not to make such an order, the authority has to provide a **detailed explanation of the situation** in which it finds itself and why this would make it impossible to comply with an order”*: R (Imam) v. London Borough of Croydon [2023] UKSC 45

- After a mandatory order is granted:

*“...the Defendant ought to have come before the Court in time to allow the Court to consider the issue **before the expiry of time to fulfil the obligation**, and the Defendant should have **explained in evidence** that compliance with the Order was proving impossible and invited the Court to rescind it and make an appropriate new Order”*: R (ZOS) v. SSHD [2022] EWHC 3527 (Admin)



Resources and Compliance

And how not to approach challenges with compliance...

- Before a mandatory order is granted:

“...the Council had not sufficiently explained its situation in its evidence...[the Council witness] spoke only in generalities on the critical question of what [resources were available to meet its statutory duty]...”: **R (Imam) v. London Borough of Croydon** [2023] UKSC 45 at [59]

“The Council has not presented any credible plan for bringing its breach of duty to an end...There is little to suggest the Council is taking serious its statutory duty, rather than seeking effectively to delegate it to the School”: **R (TXM) v. London Borough of Redbridge** [2024] EWHC 443 (Admin) at [95]

- After a mandatory order is granted:

“The Council has failed to take the urgency of the situation, or the vital importance of complying with court orders, seriously. The strong impression is that that is so is powerfully reinforced by the failure to file and serve an affidavit made by the Director...it is frankly astonishing...that no senior officer of the Council has come forward to give evidence”: **JS v. Cardiff City Council** [2022] EWHC 707 (Admin) at [92]



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Decisions for decision makers

- Hard edged legal duties vs areas of judgment
- Courts recognise relative competency of schools and other bodies to make decisions compared to the Court
- *R (Begum) v Denbigh High School* [2006] UKHL 15 re uniform policy:

“It would in my opinion be irresponsible of any court, lacking the experience, background and detailed knowledge of the head teacher, staff and governors, to overrule their judgment on a matter as sensitive as this.”



Sanctions

- **The test for exclusion: *R (SAG) v GB of Winchmore School* [2025] EWCA Civ 1335.**
On whether there was a serious breach of the behaviour policy:

“Unlike the Judge, and unlike this court, the Head Teacher and the Panel are immersed in the day-to-day running of the school and in the best possible position to evaluate the seriousness of the Appellant's conduct in that context, and the further question of whether that conduct was serious enough to warrant PEX. The views of this court about whether or not the penalty of PEX was or seems harsh, or whether or not this court would have imposed such a penalty are irrelevant.”



Sanctions

- **Exclusions and child criminal exploitation:**

R (RWU) v A Governing Body [2025] EWCA Civ 147: “I do not accept that, even if the credible suspicion threshold had been crossed, the school would have been automatically required to reinstate the Claimant”

R (CM) v PQR Academy Trust [2025] EWHC 1414 (Admin): “I find it difficult to conceive of a case where permanent exclusion, which is consistent with the Guidance and therefore genuinely a measure of last resort, would be prohibited by Article 4 ECHR”



Sanctions

- PSED and exclusions: *R (TZA) v A Secondary School* [2025] PTSR 1503
- Isolation / internal exclusion: *R (EBB) v Gorse Academy Trust* [2025] EWHC 1983:

“the assessment, management, teaching and development of particularly unsettled or struggling students – students exhibiting persistently or seriously challenging behaviours – are matters where educational judgment and expertise may be thought especially at a premium”



School management

- Prayer:

R (TTT) v Michaela Schools Trust [2024] PTSR 1627: “Ultimately, the question is whether the measure in question is proportionate. That is for the court to decide. In arriving at an answer to that question, however, the court will make allowance for the breadth of the decision-making power conferred on the decision-maker by Parliament and it will give appropriate weight to the relative expertise of the decision-maker where they have made a judgment on an issue which is within their sphere of expertise, even if that judgment is made after the event.”



School management

- **Admissions:**

R (CKT and DGT) v Twyford Church of England Academies Trust [2025] EWHC 2396 (Admin): “It is necessary to apply appropriate scrutiny to the assertions of those with responsibility for the school about the need for this oversubscription criterion, as opposed to some less stringent criterion, in order to pursue its aim, but if I accept (as I do) that their views and beliefs are genuine, I must be very cautious before substituting other views or beliefs.”

- **Length of the school day:** *R (CHO) v Lonsdale School* (hand down of judgment tomorrow)



Wider policy issues

- **Funding/finances:** *R (AB) v Bristol CC v Secretary of State for Education* [2025] EWHC 893 (Admin), *R (ALR) v Chancellor of the Exchequer* [2025] EWHC 1467 (Admin)
- **Academisation and closures:** *R (Islington LBC) v Secretary of State for Education* [2024] EWHC 1798, *R (BAI) v LB Islington* [2025] EWHC 2591 (Admin)



Concluding remarks




- Strongest judicial review claims are generally clean and squarely target a procedural issue
- Defendants will usually be able to rely upon discretion afforded to them in their decision making
- The Court remains strict on hard edged legal duties



Thank you

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